

### § 535.303

(e) The filing fee for non-substantive or other miscellaneous modifications is provided in § 535.401(g).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

#### **§ 535.303 Husbanding agreements—exemption.**

(a) A husbanding agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent handles routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does not include an agreement that provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of husbanding agreements is provided in § 535.401(g).

#### **§ 535.304 Agency agreements—exemption.**

(a) An agency agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent solicits and books cargoes and signs contracts of affreightment and bills of lading on behalf of the ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement as defined above is exempt from the filing re-

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quirements of the Act and of this part, except those:

(1) Where a common carrier is to be the agent for a competing ocean common carrier in the same trade; or

(2) That permit an agent to enter into similar agreements with more than one ocean common carrier in a trade.

(c) The filing fee for optional filing of agency agreements is provided in § 535.401(g).

#### **§ 535.305 Equipment interchange agreements—exemption.**

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for:

(1) The exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and

(2) The transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of equipment interchange agreements is provided in § 535.401(g).

#### **§ 535.306 Nonexclusive transshipment agreements—exemption.**

(a) A nonexclusive transshipment agreement is a transshipment agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or

other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's con-

currence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Inter-carrier indemnification or provision for inter-carrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

(f) The filing fee for optional filing of nonexclusive transshipment agreements is provided in § 535.401(g).

**§ 535.307 Agreements between or among wholly-owned subsidiaries and/or their parent exemption.**

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the Act (46 U.S.C. 40301(a)-(c)) between or among an ocean common carrier or marine terminal operator subject to the Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the Act and this part.

(c) Ocean common carriers are exempt from section 10(c) of the Act (46